

No. 82-1216

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In the Supreme Court of the United States

October Term, 1982

WORLDWIDE CHURCH OF GOD,
Petitioner,

VS.

RICHARD A. GIPE,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

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**I. THE DECISION BELOW IS A "FINAL JUDG-
MENT OR DECREE" WHICH IS RIPE FOR
ADJUDICATION BY THIS COURT.**

Respondent relies on the case of *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed. 2d 328 (1975), for the proposition that the decision below is not a final judgment for review by this Court. However, the *Cox* case is actually contrary to the position of the Respondent. The *Cox* decision actually found finality in a factual setting similar to this case.

There, the Supreme Court of Georgia reversed a summary judgment and remanded with directions to the trial court for trial. The Georgia Supreme Court, on rehearing, determined that a statute relied upon by the Appellee

was constitutional as a legitimate limitation on the right of freedom of expression contained in the First Amendment.

In *Cox*, the Respondent also argued that the judgment was not a "final judgment" for purposes of a petition to this Court.

In the *Cox* opinion, this Court listed at least four categories of cases where the Court has treated State Court decisions on a Federal issue as a final judgment for purposes of 28 U.S.C. § 1257 "without awaiting the completion of additional proceedings anticipated in the lower State Courts." (420 U.S. at p. 477). The order which is the object of this Petition is "final" *under at least three of the categories* listed in *Cox*. These are as follows:

(1) Even though the case has been remanded for trial, "the Federal issue is conclusive." That is, the Court of Appeals and the Appellate Division of the Superior Court have both held that the question of whether the Respondent "caused further confusion and division in the Church" is a "contract" issue which may be decided by the trial court. (See Petition, Appendix A, pp. A11-A12 and A8-A9). Said holding is directly in conflict with the affidavits by Church ministers that "confusion and division" in the Church is an ecclesiastical term grounded on scriptural interpretation, that the Church hierarchical officials already considered the ecclesiastical issue of whether or not the Respondent had "caused further confusion and division" in the Church and that they had conclusively decided this issue against him. (Petition, Appendix B, pp. A16-A19, A20-A21 and A23. See also the Declaration of Larry Darden, an attorney for the Church and graduate of its theological school, setting forth certain scriptures upon which the Church's ecclesiastical

interpretation of "confusion and division" is based, pertinent excerpts of which are set forth hereinafter as Appendix C beginning at p. 7).

Further, in deciding this "contract" issue, the Appellate Division judgment orders the trial court to engage in a three step ecclesiastical determination. Step one: inquire into Church doctrinal teaching. Step two: determine which are the "relevant religious principles." And step three: to "apply" those relevant religious principles in reaching the Court's own redetermination of the ecclesiastical issue previously determined by the Church.

Not only will this mandate allow civil courts to intrude into areas of ecclesiastical cognizance long prohibited by numerous decisions of this Court. But additionally, in the words of this Court in *Cox*, "it would also result in a completely unnecessary waste of time and energy in judicial systems already troubled by delays due to congested dockets". (420 U.S. at p. 479).

(2) The second category of cases referred to in *Cox*, may also be met here, that is, where "the federal issue, finally decided by the highest Court in the State, will survive regardless of the outcome of future State-Court proceedings." The Appellate Division below found that "in this case *the only* basis for Appellant claiming severance pay was the termination letter". (Judgment of the Appellate Department, set forth in Appendix A of the Petition for Certiorari, at p. A5, emphasis added).

The only conditions in the termination letter were to return Church property and to "cause no further confusion and division" in the Church. Thus, the case "could not remotely give rise to a Federal question . . . that may later come here . . .," other than the present Federal question *that is already here*. (*Cox*, 420 U.S. at p. 480).

(3) The fourth category referred to by *Cox* was a situation where "the federal issue has been finally decided in the state courts." Additionally, "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action." (*Cox*, *supra*, 420 U.S. at pp. 482-483). *That is the situation we have here.*

If this Court were to grant review, and then decide that only the Church hierarchy has jurisdiction to determine the "relevant religious principles" regarding "confusion and division," and to "apply" those principles, this would be dispositive of the case below.

Such a decision would prevent a trial in which the Church would either be forced on the one hand to submit its doctrinal teachings for the trial court to determine which religious principles are relevant and to apply those principles, or the Church would be forced on the other hand to refuse to submit their religious doctrinal teachings to the Court, guaranteeing judgment against the Church. Either way, the trial and subsequent appeals will only continue to subject the Church to "long and complex litigation which may all be for naught if consideration of the preliminary question . . . (of the trial court's jurisdiction) is postponed until the conclusion of the proceedings." (See *Mercantile National Bank v. Langdeau*, 371 U.S. 555, 558, 83 S.Ct. 520, 522, 9 L.Ed. 2d 523 (1963); *Cox*, *supra*, 420 U.S. 484).

(4) Even the third category referred to by the court in *Cox*, has some elements of this case. That is, "if the party seeking interim review ultimately prevails on the merits, the Federal issue will be mooted." In other words, if the trial court, upon making inquiry into Church doctrine, determines that the application of the Church's "relevant religious principles" requires a determination

that the Respondent did "cause further confusion and division in the Church," the State may accept that decision without further appeal, thus mootng any opportunity for Petitioner to have the issue heard by this Court.

The other case relied upon by the Respondent for the proposition that the "judgment" was not final, is *Gospel Army v. City of Los Angeles*, 331 U.S. 543, 67 S.Ct. 1428 (1947). The language of that case stating why it was not a final order would require that it be considered a final order in this case. There, the case was simply reversed by the state supreme court without direction to the trial court, which this Court found was "effective to remand the case 'for a new trial and places the parties in the same position as if the case had never been tried.'" (331 U.S. at p. 546).

In our case, the judgment of the Appellate Division gives specific directions to the trial court as to how the Federal issue is to be tried—which directions constitute a part of the very Federal issue before this Court. In other words, the parties will not be starting from "the same position as if the case had never been tried."

Thus, for said reasons, the judgment below is a "final judgment" for the purposes of this Court's review.

II. THE RESPONDENT WOULD HAVE CHURCH DOCTRINE DETERMINED BY SECULAR, DICTIONARY DEFINITIONS, CONTRARY TO THE NUMEROUS HOLDINGS OF THIS COURT.

The Respondent argues that the words "confusion" and "division" are not "ecclesiastical words of art." The argument is contrary to the record and to the understanding of the Appellate Department when they directed the trial court to "accept" and "apply" the Church's *religious prin-*

ciples in deciding the issue. (Petition, Appendix A, p. A9). Why apply the Church's "religious principles" unless the words "confusion" and "division" have ecclesiastical meaning?

This is a case in which the parties involved are a Church (speaking through its supervising minister) and a wayward minister of such church. The Church has stated from the beginning that the terms "confusion and division" have ecclesiastical meaning in the Church (see Declarations of ministers Roderick C. Meredith and Leroy Neff, Petition, Appendix B, pp. A16 and A20). In fact, that is the very reason said terms were used in the termination letter.

CONCLUSION

It is therefore respectfully urged that the judgment below is a "final judgment," that the terms "conclusion and division" are ecclesiastical terms of art and that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: April 12, 1983

APPENDIX

APPENDIX C

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**MUNICIPAL COURT IN THE COUNTY OF ORANGE
STATE OF CALIFORNIA
CENTRAL DISTRICT**

No. 125975

RICHARD A. GIPE,
Plaintiff,

vs.

**WORLDWIDE CHURCH OF GOD, a California
Corporation,
Defendant.**

DECLARATION OF LARRY W. DARDEN IN SUPPORT OF DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, LARRY W. DARDEN, hereby state as follows:

(1) That I have first hand, personal knowledge of the facts herein stated and could and would competently testify thereto, under affirmation, if called as a witness.

(2) That I am an attorney in the office of Rader, Helge & Gerson, attorneys for defendant Worldwide Church of God, and I am licensed to practice law in the State of California.

(3) That I am a baptized member of the Worldwide Church of God and a graduate of its theological and ministerial training school, Ambassador College, located in Pasadena, California. I have served the Church in the capacity as one of its attorneys ever since my graduation from law school and admittance to the California Bar. As a result, I am thoroughly acquainted with the ecclesiastical practices, customs, doctrines and procedures of Church discipline and government.

* * *

(8) The determination of the Worldwide Church of God hierarchical officials that Richard A. Gipe was causing "confusion and division" in the Church was based on New Testament scriptures including Romans 16:17, I Corinthians 14:33 and James 3:16. These scriptures are as follows:

Romans 16:17, "Now I beseech you, brethren, mark them which cause divisions and offenses contrary to the doctrine which ye have learned; and avoid them."

I Corinthians 14:33, "For God is not the author of confusion, but of peace, as in all churches of the saints."

James 3: 16, "For where envying and strife is, there is confusion and every evil work."

* * *

Executed this 9th day of December, 1980, at Pasadena, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Larry W. Darden
Larry W. Darden